

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.4056 of 2016
and C.M.P.No.20485 of 2016

1.Malarkodi Needivalavan
2.N.Vinoth Kumar
3.V.Raja
4.V.Durai

.. Petitioners

Vs.

1.Uma Manivel
2.T.Neelavathi

.. Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 29.10.2015 made in I.A.No.23 of 2015 in O.S.No.9 of 2011 on the file of the Principal District and Sessions Court, Ariyalur.

For Petitioners :Mr.R.Venkatesalu

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 29.10.2015 made in I.A.No.23 of 2015 in O.S.No.9 of 2011 on the file of the Principal District and Sessions Court, Ariyalur.

2.At the time of admission, argument of the learned counsel for the petitioners is heard in length.

3.The second respondent as a plaintiff has filed a suit in O.S.No.9 of 2011 for partition and separate possession of 1/5th share in A, B and D schedule properties and 4/25th share in C schedule property. Exparte preliminary decree was passed on 22.7.2011. The defendants filed an application to set aside the exparte preliminary decree along with an application in I.A.No.3 of 2014 under Section 5 of the Limitation Act. The said application was dismissed, against which, the defendants preferred C.R.P.No.2208 of 2014, which was also dismissed by this Court on 30.06.2014. The plaintiff filed an final decree application in I.A.No.7 of 2012 and that exparte final decree was passed on 28.10.2014. Therefore, the defendants 2,3,4, 6 and 7, filed I.A.No.23 of 2015 to set aside the exparte final decree along with Section 5 application for condonation of delay of 199 days. The trial

Court, after hearing both sides, dismissed the application, against which, the present revision is preferred.

4.Learned counsel for the petitioners would submit that even though the defendants have filed the written statement, exparte preliminary decree was passed. The second respondent/plaintiff has no right over the property. That factum was not considered by the trial Court. The petitioners filed O.S.No.7 of 2016 on the file of the District and Sessions Court, Ariyalur, for setting aside the preliminary decree and final decree passed in O.S.No.9 of 2011, which is pending. Hence, he prays for allowing the revision.

5.On perusal of the typed set of papers, it reveals that the second respondent as a plaintiff filed a suit for partition and separate possession of $\frac{1}{5}^{\text{th}}$ share in A, B and D schedule property and $\frac{4}{25}^{\text{th}}$ share in C schedule property. Exparte preliminary decree was passed on 22.7.2011. The defendants filed I.A.No.3 of 2014 for setting aside the exparte preliminary decree passed on 22.07.2011 along with the application under Section 5 of the Limitation Act to condone the delay and the same was dismissed. Challenging the same, the defendants preferred revision in C.R.P.No.2208 of 2014, which was also dismissed on 30.06.2014. Thereafter, final decree was passed on 28.10.2014,

against which, the petitioners preferred an application in I.A.No.23 of 2015 to condone the delay of 199 days in filing the petition to set aside the final decree.

6.According to the learned counsel for the petitioners, since C.R.P.No.2208 of 2014 is pending, the petitioners were under the impression that the final decree proceedings were pending. After disposal of revision only, they came to know about the passing of final decree on 28.10.2014. Immediately, they filed the application to condone the delay of 199 days in filing the petition to set aside the final decree passed on 28.10.2014.

7.The trial Court after considering both sides held that the petitioners filed I.A.No.3 of 2014 for setting aside the exparte preliminary decree passed on 22.07.2011 along with the application to condone the delay. As it was dismissed, they preferred C.R.P.No.2208 of 2014. The said C.R.P. was dismissed by this Court on 30.06.2014. Then final decree was passed on 28.10.2014. Aggrieved over the same, the petitioners filed the present application only on 15.06.2015, which shows the malafide intention of the petitioners to drag on the proceedings. Further, the trial Court held that notice was issued to the petitioners in the final decree proceedings. On that

basis, petitioners 1 and 3 herein have appeared through their counsel. So it is clear that they were fully aware of the pendency of the final decree proceedings. Thereafter, the matter was periodically adjourned nearly 15 times for filing counter. Since counter was not filed, then only Commissioner was appointed and that he has filed his report. In spite of giving several times for filing objections and hearing arguments on the side of the petitioners herein, since the petitioners have not appeared and advanced their arguments, final decree has been passed on 28.10.2014.

8. According to the petitioner's counsel, the petitioners filed O.S.No.7 of 2016 before the District and Sessions Court, Ariyalur, for setting aside the preliminary decree and final decree passed in O.S.No.9 of 2011 on the file of the District Court, Ariyalur. In such circumstances, I am of the view that the petitioners with a malafide intention to prevent the second respondent/plaintiff to enjoy the fruits of the decree, have come forward with the above said applications. Therefore, I do not find any reasons to interfere with the findings of the trial Court and it does not suffer any infirmity or illegality and it is

R.MALA,J.

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hereby confirmed. Consequently, the Civil Revision Petition is

dismissed.

9.In the result, the Civil Revision Petition is dismissed by confirming the fair and decretal order passed by the trial Court in I.A.No.23 of 2015 in O.S.No.9 of 2011. No costs. Consequently, connected Miscellaneous Petition is closed.

06.01.2017

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Index:Yes/No

To

The Principal District and Sessions Court, Ariyalur.

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